

### **103 KAR 16:330. Apportionment and allocation; separate accounting.**

RELATES TO: KRS 141.120.

STATUTORY AUTHORITY: KRS 131.130(1), 141.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 141.120(9)(a)(1) states that if the allocation and apportionment provisions do not fairly represent the extent of the corporation's business activity in Kentucky, a corporation may petition for, or the Department of Revenue may require, in respect to all or any part of the corporation's business activity, if reasonable, separate accounting. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation explains when separate accounting shall apply.

Section 1. General. (1) A corporation may apply for an alternative apportionment method using separate accounting, or the Department of Revenue may require separate accounting, if the corporation or Department of Revenue establishes either that the business income subject to apportionment, or one (1) or more of the factors, does not fairly represent the activity of the corporation's business activities in Kentucky. (2) The fact that taxable income is greater or lesser, or that the corporation's accounting records reflect income by contracts or by states shall not be sufficient to support a request for separate accounting.

Section 2. Separate Accounting. If a corporation is permitted or required to use separate accounting, the authorization or requirement shall be applied prospectively from the date or taxable year it was directed in writing by the Department of Revenue or requested by the corporation. Income tax returns filed under these conditions shall be subject to audit and review on a separate accounting basis to determine the correctness of income and expenses, but the method of apportioning net income shall not be changed retroactively. (32 Ky.R. 2203; 33 Ky.R. 75; eff. 8-7-2006.)